IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

Writ Petition No.8339 of 2005

Smt Neelam D Shewale.... Petitioner

vs

Shri Dadasaheb B Shewale...Respodent

Mrs M D Shewale petitioner in person

Mr. R.T.Lalwani for respondent

CORAM: S.U.KAMDAR J.

Dated 13.l2.2005

P.C:

l. Justice tempered with mercy is the hallmark of the Indian judicial system. However, it is most unfortunate when a litigant takes undue advantage of the mercy shown in the course of litigation. Present is a case of the petitioner who has been misusing the merciful attitude of the court which has been adopted so far towards her whilst deciding a number of proceedings initiated by her in this court. The record of the trial court as well as the record of this court indicates that the petitioner has been abusing the process of judicial

system and litigating the matter by subverting the judicial system which is meant for delivery of justice to a party.

2. The present petition has been filed by the petitioner challenging the order passed by the family court on l8.ll.2005 by which the cross examination of the petitioner was treated as closed. As usual at a first glance the order passed by the trial court suggests a harsh order and could result in a miscarriage of justice. However, on a deeper investigation I am of the opinion that the petitioner has not been conducting the litigation inspite of various opportunities offered by this court in the matter in earlier round of litigation. The petitioner in place of prosecuting the present legal proceedings has been using the same as a method of harassment to the respondent herein. These observations are not ipsi dixit but based on the record of this court.

3. The petition for divorce in the family court from which the present writ ptition arises has been filed by the respondent before the family court as far back as in l997 and inspite of the fact that almost 8 years have lapsed proceedings have not

been concluded. The roznama which has been produced of the case from l997 indicates that the petitioner has been raising undue issues pertaining to the payment of travelling expenses and even did not file her written statement till almost 3rd April 2000 i.e. approximately 3 years from the service of the divorce petition on her and even after filing of the written statement the matter has not been prosecuted by her in the normal course of judicial system. All methods are employed by her in delaying the trial of the proceedings in lower court. Before the matter could be considered on merits on 25th July 200l, an application was filed by the petitioner for transfer of the case from the learned judge of the family court who was taking up the matter. The roznama of 25th July 200l reads as under:

> "25.7.200l - Resumed.
>
> Before the Court
>
> Petitioner present.Respondent absent when called for.
>
> 35- Application filed by petitioner for amendment.The matter was called out on two occasions in the first session, the respondent was not present. The respondent

came to the court in the second session at 3.p.m. and makes an oral application that this could should not proceed in her case she has made an application for transfer of the matter in the High Court, she is asked to give a written application to the Court, stating that she has preferred a transfer application to the High Court and hence the matter should not proceed. She refuse to give an written application. The petitioner states that he has not been given any notice of the application filed by the respondent in High Court. She was asked to produce her application which she has filed in the High Court to which she states that she has not brought any papers to the court. She has been advised by her advocate not to sign any papers and to tell the court not to proceed in the case. Her advocate never remain present in court. The respondent thereafter refuses to answer any questions asked by the court. She directed the court to report that "I do not want to answer to say queries of the court". The behaviour of the respondent is arrogant and dictator her interim application of maintenance cannot be

heard since, she does not wish to proceed in this court.

Adjd for say to Exh 35 24.8.200l

Hearing Exh l9

sd/ Judge 7th Family Court, Mumbai"

4. The roznama of l9th December 200l reads as under:

"Before the Court

The petitioner is present, his adv present. The resp is present with escort. The legal aid advocate has made a statement before the court that she has withdrawn from this matter. An advocate from India centre for Human Rights appears before the court on behalf of the respondent but her vakalatnama is not on record. The advocate makes an oral statement before the court that the respondent has instructed her to say that she is withdrawn the transfer application in the Hon‘ble High Court. The court had asked the said statement to be given by the respect in writing but the respect has refused to give the same in writing. The

> respdt has been taken adjourment for proceedings in the Hon'ble High Court and today she refuse to give the same in writing i.e. is withdrawing. As seen from the record the respdt wants to delay the proceedings on some pretext or the other. Hence, the respondent will not be given her and the escort's travelling expense for the appearance in court today. Adjd of ll.l.2002".

5. Thereafter the petitioner refused to bring advocate and also refused legal aid. The court in the roznama of 25.9.2002 has specifically recorded that the petitioner refused to bring private advocate and also refused legal aid advocate saying that she does not want legal aid. On 23.l2.2002 once again the behaviour of the petitioner and her advocate has been adversely commented on by the learned Judge taking up the matrimonial matter. The said roznama reads as under:

> "23.l2.2002. Before the Court. Both the parties present. Escort of respondent present. Both the advocates present. Advocate for the respondent wife. Shri U D

Bhatt refused to accept the copy of the application given by the petitioner after reading it, he was requested by the court to accept the copy and then file his say on the next date. However, he again refused. It was directed to him to give in writing on that application that he is refusing to accept the copy. But he said that he will not give in writing and the court may do whatever court wants. The said advocate also commented that the court is threatening him and he knows how to deal with such situation. He argued with the court. Advocate Mrs Mahimkar and advocate Mrs Agnes Martins were present in the court alongwith other advocates.

In fact, the court was busy in the common hearing of petition nos Al77l/98 and A-l74/98 which is part heard time and bound matter, to be disposed of on or before 3lst December 2002. This defiant and non cooperative attitude of the advocate is harmful and will hamper the smooth in future. He was explained that he has to accept the copy of the application which he

did not listen at all. His attitude is not in the interest of his client and also not in the interest of justice. Hence his vakalatnama be cancelled forthwith. The respondent wife is directed to engage some other advocate within two weeks from today under any circumstances as the matter is of l997 and expedited.

66A- Reply to Exh 65 filed by the petitioner.

67A- Affidavit in surrejoinder on behalf of petitioner to respondent's affidavit in rejoinder dt l5.ll.2002 for enhancement of travelling expenses.

68- Reply filed petitioner to respondent's application dated l5.ll.2002 for litigation expenses.

69- Application by petitioner for expedition the matter. Advocate of respondent refused to accept copy of the Exh 69 after reading though requested to accept.

79- Application by respondent for stay of petition and payment.

Adjournment for hearing of Exh 65 and reply Exh 70. sd/- l0.l.2003.

6. On l0.l.2003 it has been recorded that the petitioner remained in the corridor of the court and did not attend the matter inspite of the repeatedly being adjourned and repeatedly kept back and called out. The said roznama of l0.l.2003 reads as under:

> Before the Court
> Petitioner present
> alongwith his advocate., Thee respondent did not remain present before the court though her name is called out many times and though she was present in front of the court in the corridor. The matter is ready for hearing since long time. The petitioner has already filed an application for expediting hearing (Exh 69) The petition is of l997. Respondent did not engage any advocate though directed on last occasion.
> 7l- Deposition of Mr Dadasaheb Shewale.
> 7l- P W l is read and record.
> Adjd for further chief of petitioner (PH) to 20.l.2003".

7. on 20.l.2003 the petitioner filed an application for adjournment of the proceedings.

The application was rejected by the trial court but in place of prosecuting the case,the petitioner left the court without permission of the court and even before any order is passed on the said application. In the aforesaid circumstances examination in chief of the petitioner was continued by the trial court.

8. On 2.7.2003 once again an application is made by the petitioner that the proceedings of the family court must be immediately stayed. The only ground for all these applications were that the petitioner has not been paid the travelling expenses. In the meantime the petitioner filed a writ petition in this court.In that writ petition the trial court proceedings were stayed by order dated 2.7.2003.

9. On 9.5.2005 after this court passed an order on 5.4.2005 the matter was resumed. Once again the respondent applied for change of advocate and directions were given that the matter should proceed for cross examination on day to day basis. However the conduct on the part of the petitioner has been most depricable and insulting to the lower court and she left the court without taking date

and without waiting for the order being passed by the trial court. Said fact has been recorded in the roznama of 9.5.2005.

l0. On l2.5.2005 the matter has again appeared on board but the petitioner remained absent inspite of fixing the date of l2th May by order dated 9.5.2005, still the lower court gave one more opportunity to the respondent for cross examination and adjourned the matter to l7.5.2005. On l7.5.2005 also again the respondent remained absent and ultimately the cross examination of the petitioner was treated as closed. The petitioner, however, filed misc civil application in this court once again. The said misc civil application no.l2 of 2005 was dismissed as not pressed and the trial court was directed to proceed with the matter and hear the matter as expeditiously as possible and in any event on or before 6.5.2005 particularly review petition no.A l633 of l997. Both parties were directed to cooperate with the learned trial Judge for disposal of the application as per the directions issued.

ll. On 25.5.2005 again the respondent remained absent. The witness of the respondent Ganpat

Jadhav was not examined by the petitioner and the evidence was closed. Thereafter the respondent has continuously remained absent on 2l.5.2005, 25.5.2005, 27.5.2005, 2.6.2005, 4.6.2005, l5.6.2005, 29.6.2005 and ultimately on 29.6.2005 the judgement was delivered and petition was decreed and the marriage between the petitioner and the respondent were dissolved. The petitioner once again filed first appeal being family court appeal no. ll2 of 2005 before this court. The said family court appeal was heard by the Division Bench of this court on 26.9.2005. In the said appeal the division bench of this court has recorded the submissions of the learned counsel for the respondents that the petitioner is not cooperating in the matter. She is continuously absent and not cross examining the witnesses of the respondent and that the conduct of the petitioner is not appreciable. However, keeping in mind the principle that justice should be tempered with mercy this court set aside the decree and gave an opportunity to the petitioner to defend the divorce petition and permitted the petitioner to cross examine the witnesses of the respondent and also gave her opportunity to lead her own evidence. The appeal was accordingly allowed and the matter was

remitted back for hearing the matter afresh. However, in para 5 of the order the court also directed that the petition must be decided at the earliest. The division bench also directed the family court to appoint an advocate from the legal aid committee.

l2. The matter was thereafter fixed on 24.l0.2005 before the trial court and the matter was directed to be proceeded expeditiously. Accordingly the matter proceeded thereafter on ll.l0.2005 and it was expected of the petitioner to utilise the opportunity and carry out the litigation in a manner which is required of the petitioner herein. However the roznama indicates otherwise. On ll.l0.2005 the petitioner was directed to carry out amendment in the written statement as per the order of this court and the matter was fixed thereafter on 2l.l0.2005. On 2l.l0.2005 the respondent appeared in court and carried out amendment. On 24.l0.2005 all the documents were furnished to the petitioner as per the order of this court and evidence was also given to the petitioner.Roznama of 24.l0.2005 reads as under:

" 24.l0.2005. Resumed. Both the parties

are present. Adv of the petitioner present. Adv of the respondent absent though she was directed by the court on 2l.l0.2005 to keep her advocate present on 24.l0.2005 for cross examination. Documents produced by petitioner (evidence papers) as directed by the High Court . Copies given to respondent.

ll4- Respondent’s application for travelling expenses and local expenses (without original tickets) Respondent directed to submit original tickets. She refused to submit the same.

ll5- Respondent’s application for proper next date of hearing. The conduct of the respodnment is totally disrespectful and undignified.

ll6- Say of the petitioner to Exh ll5 order passed below Exh ll5, Application rejected, Matter is adjourned to 26.l0.2005 for cross examination of the petitioner.

Next date given as per High Court’s direction as early as possible with directions to respondent to keep her adv present for cross examination of petitioner. Adj for petr’s cross..... 26.l0.2005"

l2. The matter was thereafter fixed on 26.l0.2005. Once again travelling expenses claim was raised. Three weeks time was granted to cross examine witnesses. However, the petitioner once again applied for stay of the said order and wanted to move this court. The matter was thereafter fixed on l0.ll.2005. The respondent remained absent. Again adjournment was applied for. On ll.ll.2005 once again a last chance was given to the petitioner for conducting cross examination but the petitioner refused to prosecute the matter. On l8.ll.2005 once again an order was passed for closing of the cross examination as the petitioner refused to prosecute the matter before the trial court.

13. The grievance of the petitioner is that bhatta is not paid to her towards travelling expenses and copies of documents were not given when in fact pursuant to the order of the division bench dated 24.l0.2005 all documents were given to the petitioner but she has still not proceeded with the cross examination. In the circumstances after giving large number of opportunities the family court has closed the cross examination of the

petitioner herein. It is this order dated l8.ll.2005 which is challenged in this petition. The matter was moved before me on urgent basis on 30.ll.2005 by the petitioner without notice to the other side and a stay was obtained that the proceeding should not proceed further in the family court. When the matter was fixed on 5.l2.2005 instead of remaining present in court the petitioner forwarded a telegram stating that she is going out of Mumbai on the ground that somebody in the family had expired. The matter was thereafter adjourned to 6.l2.2005 and a telegram was sent by the petitioner. The matter was thereafter fixed on l2.l2.2005. On l2.l2.2005 again the petitioner refused to proceed with the petition on the ground that she has not been given the copy of the order which is impugned by the present petition. A copy of the order was given and the impugned order has been now brought on record by amending the petition. Even today at the hearing of the petition I still offered opportunity to the petitioner to conduct cross examination on l6.l2.2005 before the family court. However, the conduct of the petitioner is such that she does not want to continue with the cross examination of the witnesses but continued to raise grievances which

are uncalled for and without any basis. One of the grievance raised is that the petitioner seeks transfer of the proceedings before the family court Judge. There is no case made out for such transfer. It is obvious from the record which speaks for itself that the petitioner is subverting the judicial system of this court by prolonging the matter unnecessarily by not prosecuting the matter. I do not find any substance in the present petition. In the aforesaid circumstances Petition is accordingly dismissed. The petitioner is directed to pay cost quantified at Rs.l0,000/- to the respondent.